



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2023-0193; FRL-10815-01-R7]

Air Plan Approval; State of Missouri; Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Missouri on March 7, 2019. Missouri requests that the EPA approve revisions to a state regulation for the Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin. These revisions include adding definitions that are specific to the rule, restructures the rule into the standard rule organization format, and removes unnecessary words. The revisions are administrative in nature and do not impact the stringency of the SIP or air quality. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2023-0193 to www.regulations.gov. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to www.regulations.gov, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7718; email address: brown.steven@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

Table of Contents

- I. Written Comments
- II. What is Being Addressed in this Document?
- III. Have the Requirements for Approval of a SIP Revision Been Met?
- IV. What Action is the EPA Taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2023-0193, at www.regulations.gov. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

II. What is Being Addressed in this Document?

The EPA is proposing to approve a SIP revision submitted by the State of Missouri on March 7, 2019. Missouri requests the EPA approve revisions to their SIP by replacing the existing rule, Title 10, Division 10 of the Code of State Regulations (CSR), (10 CSR 10-6.170) "Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin", with a revised and restructured version of the same rule. The state has revised the rule to add definitions specific to this rule, organize the rule into state standard rule organizational format, and remove unnecessary words. After review and analysis of the revisions, the EPA concludes that these changes do not have adverse effects on air quality. The full text of these changes can be found in the State's submission, which is included in the docket for this

action. The EPA's analysis of the revisions can be found in the technical support document (TSD), also included in the docket.

III. Have the Requirements for Approval of a SIP Revision Been Met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from 8/01/2018 to 8/30/2018 and received a total of eight comments. The comments and responses are summarized herein. *Comment 1:* The EPA commented that they previously recommended that the department add provisions to the rule to make it clear what a "reasonable degree" is, which "techniques" the director might approve, and how the director might make that determination. *Response:* The state responded saying the necessary measures for determining the origin and nature of particulate matter emissions that travel beyond a property line are handled on a case-by-case basis. In many cases the nature and origin of fugitive particulate matter emissions is obvious and does not require any scientific measurements. After further review, the EPA agrees that this type of review is done on a case-by-case basis and since the rule applies to any operation, process, or activity, specific techniques or scientific methods would not always apply to determine the nature and origins of the particulate matter fugitive emissions. An example an application of this rule may be the evaluation of the handling

or transporting of materials that cause dust to be seen in the air or dust residue left on surfaces after this type of activity. In this example, the state air program would investigate and decide on the nature and origin of the particulate matter emissions based on the evidence available. Applying a specific scientific methodology to investigate the origin and nature of the particulate matter is not pertinent in this situation. EPA believes these are the types of case-by-case scenarios that this rule was primarily intended to address. No changes were made to the rule text as a result of this comment.

Comment 2: The EPA recommended that the department provide regulatory language on what record keeping and reporting requirements would exist for a facility to determine compliance with the rule. *Response:* The state responded that since the rule does not prescribe monitoring or control requirements the department cannot designate record keeping or reporting requirements. Since the rule is not necessarily subject to a facility but to an action or processes, the EPA agrees that recordkeeping and reporting are not required. No changes were made to the rule text as a result of this comment. *Comment 3:* The St. Louis County Department of Public Health commented on a semi colon placed after the word facility. No changes were made to the rule text as a result of this comment. *Comment 4 and 5:* The St. Louis County Department of Public Health, and Newman, Comley, and Ruth P.C., commented that the rule did not include an upper particle size limit. *Response:* As a result of those

comments, the state added an upper size limit to the definition of particulate matter in subsection (2)(F) of this rule that particles greater than one hundred micrometers (100 µm) are not defined as particulate matter. *Comment 6:* Newman, Comley, and Ruth P.C. commented that facilities constructed before November 30, 1990, and located within the city limits of any municipality should be exempt from this rule. *Response:* Since the commenter did not provide justification for this exemption, and the state was not able to justify this exemption, no changes were made to the rule text as a result of the comment. *Comment 7 and 8:* Newman, Comley, and Ruth P.C., and the St. Louis County Department of Public Health commented that removing the word "shall" from a rule requirement could be interpreted that the requirement is no longer necessary. The commenter stated that regulations must be clear and concise as to the intent of the regulation. The department should review all instances of deleting the word "shall" and consider retaining it. *Response:* As a result of those comments, the state revised the language in paragraphs (3)(A)1. and (3)(A)2. to retain the word "shall" in order to clarify the obligation for facilities.

In addition, as explained above and in more detail in the technical support document, which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What Action is the EPA Taking?

The EPA is proposing to amend the Missouri SIP by approving

the State's request to revise 10 CSR 10-6.170 "Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin." We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri rule 10 CSR 10-6.170 discussed in section II of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and

does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Missouri did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and

applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Particulate matter.

Dated: _____
April 6, 2023.

Meghan A. McCollister,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

2. In § 52.1320, the table in paragraph (c) is amended by revising the entry "10-6.170" to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.170	Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin	3/30/2019	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
* * * * *				

* * * * *

[FR Doc. 2023-07682 Filed: 4/13/2023 8:45 am; Publication Date: 4/14/2023]